

# EXHIBIT B

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
CASE NO. 18-MD-2865 (LAK)

\_\_\_\_\_)  
IN RE: )  
\_\_\_\_\_)  
CUSTOMS AND TAX ADMINISTRATION OF )  
THE KINGDOM OF DENMARK )  
(SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
\_\_\_\_\_)

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL  
EXAMINATION OF  
GRAHAM WADE

DATE: March 16, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 63

1       were no dividends received on the other -- on  
2       the cum ex transactions.

3           Q     Okay. And I'm asking you what you  
4       consider your expertise to be that allows to  
5       you draw that conclusion?

6           A     My expertise? Well, it's, you  
7       know, the -- I've spent a significant portion  
8       of my career involved in structured financial  
9       transactions, and I am able to -- you know, I  
10      have reviewed the trades that were done, how  
11      they were arranged, and all the details as  
12      laid out in my report, and I -- I think I've  
13      given the reasons why I reached those  
14      conclusions as a result of that experience in  
15      my report.

16          Q     Okay. Again, if it's not a legal  
17      opinion, would you agree that whether  
18      financial transactions executed by the  
19      various defendants would entitle an entity or  
20      individual to a dividend is informed by legal  
21      principles?

22           MR. OXFORD: Objection to form.

23          A     No, not really, no. I think, as  
24      I've said, my opinions lead me to conclude  
25      that as a matter of fact, there were no

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 65

1 MR. OXFORD: Objection to form.

2 A Okay. Well, apart from  
3 the -- apart from the absence of shares, the  
4 other most fundamental reason, although, as  
5 I've said, there are others in my report, is  
6 that the nature of the way the cum ex  
7 transactions were structured is that even if  
8 there had been shares, it would still not  
9 have been the receipt of the dividend. It  
10 would have been a receipt of a dividend  
11 compensation payment.

12 Q Okay. And whether something is a  
13 dividend or a dividend compensation payment,  
14 that's informed by legal principles.

15 Right?

16 MR. OXFORD: Objection to form.

17 A I think it's formed by an  
18 understanding of the market practice that  
19 relates to security financing and equity  
20 finance transactions.

21 Q Okay. So it's your testimony that  
22 whether something is a manufactured dividend  
23 or a real dividend or a dividend compensation  
24 payment is not informed by any legal  
25 principles?

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 66

1 MR. OXFORD: Objection to form.

2 A No, that's not my -- that's not my  
3 testimony.

4 Q Okay. So is the determination of  
5 whether something is a real dividend or a  
6 dividend compensation payment or a  
7 manufactured dividend informed by legal  
8 principles?

9 MR. OXFORD: Objection to form.

10 A My response is that understanding  
11 the market practices around those issues is  
12 something that, based on my experience, I  
13 believe I have expertise to offer an opinion  
14 on.

15 Can we agree on a break before the  
16 next question?

17 MR. OXFORD: The witness is asking  
18 for a break, Greg. We've been going  
19 about an hour and 12 minutes.

20 MR. PRUDEN: That's fine.

21 MR. OXFORD: Thank you.

22 THE VIDEOGRAPHER: The time is  
23 8:12 a.m. New York time and we're going  
24 off the record.

25 (Whereupon a discussion was held

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 67

1 off the record.)

2 THE VIDEOGRAPHER: Stand by. The  
3 time is 8:27 a.m. New York time and  
4 we're back on record.

5 Q Okay. Before I ask you a  
6 substantive question, I just want to make  
7 sure you can see me this time, Mr. Wade.

8 Am I visible?

9 A No. No, actually you're not.  
10 You're --

11 MR. OXFORD: You're kind of small.  
12 You've grown. Okay. You're good.

13 A Okay. That's good.

14 Q Okay. Great.

15 I just want to ask again: Is the  
16 question of whether someone is entitled to a  
17 dividend informed by any legal principles, in  
18 your view?

19 MR. OXFORD: Objection to form.

20 A I think, as I've said, my opinion  
21 on that matter is as expressed in this report  
22 and is based on the facts of the case and my  
23 market experience looking at similar  
24 transactions.

25 Q Okay. Is the question of whether

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 68

1 someone is entitled to a dividend informed by  
2 legal principles?

3 MR. OXFORD: Objection to form.

4 A Well, I think in this particular  
5 case, my opinions on that question are as  
6 outlined in my report and subject to the  
7 facts that I've reviewed in this case.

8 Q Okay. Without reference to what's  
9 in your report, can you tell me whether your  
10 belief is that whether someone is entitled to  
11 a dividend is informed by legal principles?

12 MR. OXFORD: Objection to form.

13 A In order for me to answer that  
14 question, I would need to understand what you  
15 mean by what circumstances you're talking  
16 about, and for what purposes you are asking  
17 that question. Because it could have  
18 different answers depending on that.

19 Q I'm asking you, as a general  
20 matter, if someone receives a payment and  
21 you're trying to figure out whether they're  
22 entitled to keep a dividend, whether that  
23 payment and that analysis is informed by  
24 principles of the law.

25 Can you answer that question?

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 69

1 MR. OXFORD: Objection to form.

2 A No, not in those general terms, I  
3 couldn't answer that question. I would need  
4 to understand the facts and circumstances of  
5 the situation to which that question related  
6 to.

7 Q Why can't you answer the question?

8 MR. OXFORD: Objection. He's just  
9 told you why he can't answer the  
10 question.

11 Q What additional facts and  
12 circumstances would you need to know? My  
13 previous question's withdrawn.

14 A I would need to know --

15 MR. OXFORD: Objection to form.  
16 Sorry, Graham.

17 A I would need to know all the facts  
18 and circumstances.

19 Q Okay. Can you tell me any  
20 particular facts and circumstances that would  
21 be relevant to your analysis of whether a  
22 payment that somebody receives is a dividend?

23 MR. OXFORD: Objection to form.

24 A No, because that's such a broad  
25 hypothetical that I don't even know -- I



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 70

1 can't -- I wouldn't even know where to start.

2 I would need to understand all the  
3 facts and circumstances of your hypothetical,  
4 and then I could -- and also, as I said  
5 before, for what purpose you wanted me to  
6 answer that question, and then I -- and then  
7 I could give you a response.

8 Q Okay. For the ED&F trades, in the  
9 circumstances where you contend that ED&F  
10 clients received a dividend compensation  
11 payment and not a dividend, is the  
12 distinction between "dividend" and "dividend  
13 compensation payment" informed by legal  
14 principles?

15 MR. OXFORD: Object to the form.

16 A It's -- my opinion on that matter  
17 is informed by my expertise as someone who  
18 has been involved in the equity finance  
19 industry for a long period of time.

20 Q That's not my question.

21 Is that distinction informed by  
22 legal principles?

23 MR. OXFORD: Objection to form.

24 A And my answer is the same.

25 My opinion on that question is

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 71

1 informed by market practices, market  
2 knowledge, understanding of how these  
3 transactions are designed and executed, and  
4 all the other factors that I gave in my  
5 report.

6 Q Okay. And so it's your testimony  
7 that that opinion is not informed by any  
8 legal principles?

9 MR. OXFORD: Objection to form.

10 A My position is that my opinions on  
11 the question of the nature of the payment is  
12 as laid out in my report and is based on my  
13 understanding of market practice, how these  
14 transactions were structured, and the  
15 detailed facts, again as outlined in my  
16 report.

17 Q Is there a reason you can't answer  
18 my question specifically of whether  
19 distinction between a dividend and a dividend  
20 compensation payment is informed by legal  
21 principles?

22 MR. OXFORD: Objection to form.

23 A Because my opinion in this  
24 situation is predicated on all the facts and  
25 circumstances and all the market practice and

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 72

1 knowledge of these types of transactions.

2 Q Okay. Is that your complete answer  
3 to my question of whether or not the  
4 distinction between a dividend and a dividend  
5 compensation payment is informed by legal  
6 principles?

7 MR. OXFORD: Objection to form.

8 A My answer to the question, again,  
9 even with the question of whether a dividend  
10 and a dividend compensation payment are  
11 different, can be for any number of purposes.

12 So what I'm being clear on is the  
13 distinction I have drawn in making any  
14 opinions is based on the facts and  
15 circumstances and all the other details as  
16 outlined in my report.

17 So, in a different situation, there  
18 might be different things. But in the case  
19 of the conclusions I've reached on that  
20 particular topic for the purposes I've  
21 reached it in my report, it's based on my  
22 study of the case and my market knowledge and  
23 practice over many years.

24 Q Okay. And does your analysis on  
25 the ED&F transactions in your report rely in

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 73

1 any way on your knowledge of legal  
2 principles?

3 MR. OXFORD: Objection to form.

4 A It relies on all the factors that  
5 I've included in my report, including market  
6 practice, understanding the nature of the  
7 transactions, and understanding all the facts  
8 and circumstances of the case as outlined in  
9 my report.

10 Q Respectfully, sir, that's not my  
11 question.

12 My question is whether or not that  
13 analysis depends on legal principles or  
14 knowledge of the law.

15 Can you answer that question with a  
16 "yes" or "no?"

17 MR. OXFORD: Objection to form.

18 You can answer if you're able.

19 A I'm sorry, but I'm going to keep  
20 giving you the same answer, which is the  
21 opinions for the specific purpose on which  
22 I've drawn distinctions between dividends and  
23 dividend compensation payments in my report  
24 is for the reasons and on the basis that I've  
25 included in my report.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 74

1 Q Okay. So you're not able to answer  
2 "yes" or "no."

3 Right?

4 MR. OXFORD: Objection to form.

5 A No. I'm just saying that  
6 the -- the answer I'm giving is that the  
7 opinions I've given on that particular issue  
8 are as outlined in my report and are based on  
9 market practice and experience as -- and the  
10 facts and circumstances as included in my  
11 report.

12 Q So you are able to answer "yes" or  
13 "no?"

14 MR. OXFORD: Objection.

15 A I just said it.

16 Q If you are able to answer "yes" or  
17 "no," could you please respond to the  
18 question -- of whether, for the ED&F  
19 transactions you analyzed, is the distinction  
20 between a dividend and a dividend  
21 compensation payment informed by legal  
22 principles or knowledge of the law -- with a  
23 yes-or-no answer?

24 MR. OXFORD: Objection to form.

25 A And I think as I've said, my

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 75

1 opinions are the basis of my market practice  
2 and my review of all the facts and  
3 circumstances of this case.

4 Q I'm entitled to know, respectfully,  
5 sir, whether or not your opinion relies in  
6 any way on legal principles. So I'm going to  
7 ask you one more time.

8 Does your analysis of the ED&F  
9 transactions in your reports and the  
10 distinction between whether a payment  
11 received is a dividend compensation payment  
12 or a dividend informed by legal principles?

13 MR. OXFORD: Objection to form.

14 A The conclusions -- opinions in my  
15 report that are relevant to the question of  
16 the difference between a dividend  
17 compensation payment and a real dividend as  
18 far as it is relevant to the questions in my  
19 report are formed by my review of the  
20 transactions and my understanding of market  
21 practice in the security financing market.

22 Q Okay. It's also your view in your  
23 report that you are not opining on the state  
24 of knowledge of the pension plans or anyone  
25 else.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 76

1 Right?

2 MR. OXFORD: Objection to form.

3 A I have not given an opinion on the  
4 specific state of mind or knowledge of any  
5 individual in the case.

6 Q Okay. I want to move on now to  
7 some questions about the transfer of  
8 ownership rights in securities transactions.

9 Is it your understanding, Mr. Wade,  
10 that a trade instruction and a trade  
11 confirmation taken together form a securities  
12 contract?

13 MR. OXFORD: Objection to form.

14 A No, it's not.

15 Q Okay. What do you disagree with in  
16 that definition that I provided?

17 MR. OXFORD: Hold on. Just let me  
18 get my objection. I object to the form.

19 You can answer.

20 A They are -- they are relevant  
21 factors in understanding in terms of a  
22 securities transaction, but they are not  
23 necessarily the only factors that may be  
24 relevant.

25 Q I'm not sure you understood my

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 106

1 have -- you know, there are a whole range of  
2 different forms of legal ownership.

3 So I need you to be a bit more  
4 precise.

5 Q Okay. Is it your understanding  
6 that what it means to own a share depends on  
7 the legal circumstances in which you're  
8 asking that question?

9 MR. OXFORD: Objection to form.

10 A Again, the question of what  
11 ownership means for the particular purposes  
12 in which that question's asked, I need to  
13 know what purposes it's asked, and all the  
14 facts and circumstances that surround that  
15 particular share.

16 So if you give me a specific  
17 example, I can give you my thoughts.

18 Q Is it your testimony that you're  
19 unable to tell me, as a general principle,  
20 what it means to be a legal owner of a share  
21 in Denmark?

22 MR. OXFORD: Objection.

23 A What I'm saying is that over the  
24 course of my career I spent a long time and I  
25 understand that the question you're asking me



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 107

1 can be a much more complex question than it  
2 appears because it requires understanding the  
3 exact facts and circumstances, for what  
4 purpose, i.e., you know, is it tax, is it  
5 accounting, is it regulation, is it, you  
6 know, record holder from the issuer's  
7 perspective?

8           There's a range of different ways  
9 in which one can think about who the owner of  
10 a share is. And without the full facts and  
11 circumstances and the specifics and for what  
12 purpose the question is being asked, I -- I  
13 can't answer it.

14           Q    Is it your understanding that the  
15 legal owner of a share can be a different  
16 person in different circumstances?

17           MR. OXFORD: Object to the form.

18           A    It would be highly unusual if a  
19 given share for the same -- going back to my  
20 point about there are different  
21 purposes -- if we're talking about a specific  
22 definition of "ownership," in my experience,  
23 it would be highly unusual if two people can  
24 be the same owner of the share for the same  
25 purpose.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 108

1           Q     What about whether two people can  
2     be the same owner of the share for different  
3     purposes?

4           MR. OXFORD: Sorry. Just let me --  
5     let me get my objection in, please,  
6     Mr. Wade.

7           So can you just repeat that  
8     question, Greg?

9           MR. PRUDEN: Yeah. There was an  
10    error in my question anyway, so let me  
11    re-ask it.

12          Q     What about whether two people can  
13    be the owner of the same share for different  
14    purposes?

15          MR. OXFORD: Object to the form.

16          A     That's possible, yeah.

17          Q     Okay. What's your understanding  
18    that the owner can be a different person in  
19    different circumstances based on?

20          MR. OXFORD: Object to the form.

21          A     My -- over the course of my career,  
22    you know, as I said, you've got accounting  
23    regulation, you've got nominee ownership. It  
24    is possible and I've seen instances over the  
25    course of my career where the owner for one

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 112

1 is you've given me no information about what  
2 the terms of the transaction are, who the  
3 people are, for what purpose they did the  
4 transaction, whether it was on-exchange,  
5 off-exchange.

6 You just haven't given me any  
7 information, so I'm unable to answer your  
8 question.

9 Q Okay. So you're unable to answer  
10 my question? That's your answer?

11 A For the reasons I just gave, I am  
12 unable to answer that question, yes.

13 Q Are you familiar with the term  
14 "beneficial owner?"

15 MR. OXFORD: Object to the form.

16 A Yes.

17 Q What's your understanding of what  
18 the definition of "beneficial owner" is?

19 MR. OXFORD: Object to the form.

20 A Again, it depends on the  
21 circumstances and it can have -- even the  
22 term "beneficial owner" can have different  
23 meanings in different contexts.

24 But as a general proposition, it  
25 tends to mean the person who has the overall

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 115

1       you may mean nominee ownership, but I don't  
2       know.

3           Q     I'm asking you as a general matter  
4       whether you understand that there's a general  
5       definition of what it means to be the legal  
6       owner of a Danish issuer in Denmark?

7           MR. OXFORD: Object to the form.

8           A     And my answer, going back to an  
9       answer I gave a short while ago, is that over  
10      the course of my career, one of the many  
11      things I have learned is that there are a  
12      wide range of different legal regimes and  
13      legal concepts. And even within Denmark I'm  
14      sure there are a number of different legal  
15      regimes which may be relevant and they may  
16      all have different definitions of what "legal  
17      ownership" means.

18                So I can't really -- without being  
19      really specific, I can't answer that.

20           Q     Okay. And if you were to use the  
21      term "legal ownership" as a general term, it  
22      wouldn't be readily understood what you meant  
23      by the term.

24                Right?

25           MR. OXFORD: Object to the form.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 125

1       when did the buyer of the shares become the  
2       legal owner of the shares?

3           A     I'm really sorry, that -- sorry. I  
4       just didn't catch that question.

5           The sound has been a bit worse  
6       since we've restarted again. I don't know if  
7       that's -- that's the only change.

8           Sorry, but could you repeat the  
9       question?

10          Q     Yes. For the purposes of making a  
11       tax reclaim application in Denmark, in the  
12       transactions that you analyzed in this case,  
13       when did the buyer of the shares become the  
14       owner of those shares?

15          MR. OXFORD: Object to the form.

16          A     I don't believe I've given an  
17       opinion as to the requirements for when or  
18       what exactly is required to make a tax  
19       reclaim.

20          My opinions relate to the fact that  
21       if we go back to the tax vouchers, there are  
22       three key facts in the tax vouchers.  
23       Number 1, that the pension plans held shares;  
24       Number 2, that they received dividends; and  
25       Number 3, that they suffered tax.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 126

1                   And my opinions are fundamentally  
2           that those three statements are false. But I  
3           have offered no opinion as to, you know, what  
4           the Danish tax consequences of -- as a result  
5           of that are.

6           Q     Okay. Well, you said that -- you  
7           told me in response to a question that I  
8           asked you, Mr. Wade, whether and in what  
9           context I was using the term "ownership"  
10          would inform your answer to my question.

11                  I'm not asking you about opinions  
12          that you provided or not. What I'm asking  
13          you right now is whether you understand that  
14          for the purpose of making a tax reclaim in  
15          Denmark, when, in a securities transaction,  
16          the ownership would transfer from the seller  
17          to the buyer?

18                  MR. OXFORD: Object to the form.

19          A     And my response is that given the  
20          opinions that I gave and the fact that I am  
21          not giving opinions on Danish tax law, I have  
22          not given an opinion on the question of what  
23          the precise conditions required are to obtain  
24          a Danish tax reclaim.

25                  But it's my opinion that the three

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 129

1           A    Well, I think -- I don't -- I don't  
2    really understand that question because my --  
3    under my definition, which I think is the --  
4    well, I know, based on my market practice, is  
5    the accepted market definition of a dividend  
6    compensation payment -- a dividend  
7    compensation payment is a contractual payment  
8    made under the contract for transfer of  
9    securities.

10                So it's definitionally not a  
11    dividend.

12           Q    Okay. So your testimony is that a  
13    payment that's made from the seller to a  
14    buyer of securities can never represent a  
15    real dividend?

16                MR. OXFORD: Object to the form,  
17    misstates his testimony.

18           A    That's -- that's not what I said.

19           Q    Okay. Is it your testimony that a  
20    contractual payment that represents a  
21    dividend from the seller to a buyer of shares  
22    is always a manufactured dividend?

23                MR. OXFORD: Object to the form.

24           A    I don't think I said that. I  
25    defined -- I gave my definition, which is the

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 130

1 generally accepted market definition, that a  
2 dividend compensation payment -- or a  
3 manufactured dividend, if you prefer that --  
4 is a contractual payment made under contract  
5 for the transfer of securities.

6 Q Okay. And can that ever be  
7 considered a real dividend?

8 MR. OXFORD: Object to the form.

9 A For what purpose?

10 Q For the purposes of determining  
11 whether the payment received is a dividend?

12 MR. OXFORD: Object to the form.

13 A Well, my understanding of the term  
14 "dividend" is a dividend is a payment from an  
15 issuing company made to a shareholder in  
16 respect of that person's being the owner of  
17 shares in a company.

18 So, in that sense, a dividend and a  
19 manufactured dividend, as I've previously  
20 just defined them and are included in my  
21 report, cannot be the same thing under  
22 those -- as defined for those purposes.

23 Q Okay. Well, how do you determine  
24 whether somebody is the owner of shares in a  
25 company?



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 138

1 is an owner of a share?

2 MR. OXFORD: Object to the form.

3 A As I said, based on my extensive  
4 experience over many years in the structured  
5 finance industry, it would be very imprudent  
6 of me to use the general English meaning of  
7 "owner" when we're talking about securities  
8 transactions where "owner" may well be  
9 defined in a number of different ways  
10 depending on what the situation and the  
11 context and the facts are.

12 Q Okay. And have any of the  
13 documents you reviewed in this case formed a  
14 basis for your opinion as to who is  
15 determined to have received a dividend paid  
16 by an issuer?

17 MR. OXFORD: Object to the form.

18 A My -- my opinions are as they are  
19 covered in the report in detail, and all the  
20 facts and circumstances and the documents  
21 that I've relied on are as covered in my  
22 report. So if there's a specific aspect of  
23 that that you'd like to go through, I'm happy  
24 to.

25 Q Okay. Can you give me one example

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 159

1 execute a trade before the trade date, but  
2 only deliver ex-dividend shares.

3 Q Okay. And is your only basis for  
4 stating that ex-dividend shares were  
5 delivered that the shares were delivered  
6 after the record date?

7 MR. OXFORD: Object to the form.

8 A No, because -- and again, what  
9 does -- what does "delivered" mean? That's a  
10 slightly imprecise term.

11 But in the transactions in this  
12 case and for all the reasons given in the  
13 report, including the way they were  
14 settled -- the pricing, who the  
15 counterparties were, the nature of all the  
16 arrangements -- it is clear to me that what  
17 the parties intended to do was have a  
18 contract where the cum ex seller had agreed a  
19 trade under which they were going to deliver  
20 ex-dividend shares.

21 That's -- that's my opinion.

22 Q Mr. Wade, I used your term. You  
23 said, "What people understand that to mean is  
24 a transaction where you're going to execute a  
25 trade before the trade date but only deliver

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 163

1 give rise to a tax reclaim on a contract,  
2 which is the contract for delivery of  
3 ex-dividend shares.

4 And if someone were long  
5 immediately before doing a cum ex, so they  
6 were doing a cum ex out of a long position,  
7 that is not an impossible thing to happen,  
8 but it would be a quite unusual thing to be  
9 done.

10 Q And what's the basis for that  
11 testimony?

12 A The basis for that testimony is  
13 being responsible and working in the  
14 structured finance industry for many years.

15 Q Have you ever executed cum ex  
16 transactions yourself?

17 A No.

18 Q Have you, as far as you're aware,  
19 worked for an institution that ever entered  
20 into cum ex transactions?

21 MR. OXFORD: Object to form.

22 A I believe it's a matter of public  
23 record that Barclays has executed cum ex  
24 transactions, but limited to -- as I say in  
25 my report, the nature of cum ex transactions

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 164

1 changed significantly, so not in 2012.

2 In my experience, prior to my  
3 involvement in this case, it was only ever my  
4 understanding that cum ex transactions were  
5 executed in Germany and prior to the various  
6 legislative changes that were made in  
7 Germany.

8 Q Okay. So you, prior to this case,  
9 had no understanding of cum ex transactions  
10 being executed in any context other than in  
11 the German market prior to 2012.

12 Is that right?

13 MR. OXFORD: Object to the form,  
14 misstates his testimony.

15 A Yeah. My answer was, I think, that  
16 Barclays, to my knowledge, only undertook  
17 cum ex transactions prior to the legislative  
18 changes in Germany and only ever undertook  
19 them in respect of German shares, the reason  
20 for that being that based on my market  
21 experience and extensive understanding of the  
22 European securities, no market participant or  
23 advisor who I ever dealt with ever considered  
24 the outside of those parameters, that a  
25 cum ex transaction was effective.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 170

1 Okay?

2 MR. OXFORD: Object to the form.

3 A Okay. That's counterfactual, but  
4 go on.

5 Q Okay. And I want you to assume  
6 that the seller of those shares had a long  
7 position in the securities that they sold on  
8 the trade date, which is the day before the  
9 ex date.

10 Is that clear?

11 MR. OXFORD: Objection to form.

12 A That's clear.

13 Q Okay. And then the transaction has  
14 an intended settlement date and an actual  
15 settlement date of the day after the record  
16 date.

17 Okay?

18 A Understood.

19 Q Okay. Assuming those facts, would  
20 that change your opinion on whether the buyer  
21 of the shares would be entitled to a  
22 dividend?

23 MR. OXFORD: Object to the form.

24 A So the only -- so the change versus  
25 the facts as I understand them is that the

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 172

1 date in order to be entitled to the dividend?

2 MR. OXFORD: Object to the form.

3 A The -- there are a range of reasons  
4 why I would reach that conclusion, that  
5 amongst those is the fact that based on, you  
6 know, my extensive market practice of  
7 situations like this, what the -- in the  
8 assumed facts that you've given, it's still  
9 the case that what the cum ex purchaser has  
10 been given is a dividend compensation  
11 payment.

12 And based on my experience, what  
13 would have -- what could have been  
14 appropriate is if the cum ex -- a purchaser  
15 had been given a voucher which said, "You  
16 received a dividend compensation payment."

17 That -- that -- but that's not what  
18 the tax vouchers state that they are.

19 Q And what in your extensive market  
20 practice experience leads you to believe that  
21 the payment that's made by a seller to a  
22 buyer in the hypothetical I just described  
23 would not be considered a dividend?

24 MR. OXFORD: Objection to form.

25 A Well, because it is definitionally

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 171

1 cum ex seller was long at the time where it  
2 entered into the cum ex sale.

3 Is that -- my understanding of your  
4 assumption correct?

5 Q Well, I'm not going to agree that  
6 that's different from the facts, but that's  
7 the assumption I'm asking you to assume.

8 A Okay. Understood.

9 That would not change my ultimate  
10 opinion conclusion that the information on  
11 the tax vouchers was incorrect.

12 Q Okay. And what information on the  
13 tax vouchers would have been incorrect in  
14 that circumstance?

15 MR. OXFORD: Object to form.

16 A All -- all three. All three of the  
17 key items on the tax voucher would still be  
18 incorrect.

19 Because the cum ex purchaser did  
20 not own the shares on the record date, it did  
21 not receive the dividend, and it did not  
22 suffer the tax.

23 Q Okay. What is the basis for your  
24 assertion that in any circumstance, a  
25 purchaser must own the shares on the record

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 174

1 compensation payment.

2 If -- and I express no opinion on  
3 this because I'm not expressing opinions on  
4 Danish tax -- if the pension plan were able  
5 to take a receipt for a dividend compensation  
6 payment to the Danish tax authorities and  
7 make a reclaim, if you -- you know, if that's  
8 something that were possible, it would be  
9 highly surprising to me, based on market  
10 practice and, you know, my involvement in the  
11 European securities market, including  
12 understanding, you know, quite a lot about  
13 different tax regimes in that market, it  
14 would be very surprising.

15 But if it was the case that a  
16 receipt for a dividend compensation payment  
17 entitled you to a tax reclaim in Denmark,  
18 that's not something I've offered an opinion  
19 on.

20 Q Okay. But you would agree that  
21 whether or not what you described as a  
22 "dividend compensation payment" would entitle  
23 you to a tax reclaim in Denmark is a matter  
24 of Danish law.

25 Right?



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 187

1 think it's as I defined it earlier today.

2 A dividend -- there's been

3 a -- there's been a contract for the transfer  
4 of securities between the seller and the  
5 buyer and you've asked me to assume that the  
6 seller makes a payment under that contract to  
7 the -- to the buyer.

8 So I -- that would be -- unless  
9 there's some other feature that I haven't  
10 understood properly, that is definitionally a  
11 dividend compensation payment.

12 Q Under whose definition?

13 A Under both my definition I've used  
14 in my report and the general market HMRC  
15 people involved in the European equity  
16 finance industry.

17 Q Can you point to anything more  
18 specific than that as the source of the  
19 definition that you're reciting now?

20 MR. OXFORD: Object to the form.

21 A Well, amongst others, as I cite in  
22 my report, there's the HMRC definition which  
23 is covered in my report. So that's one which  
24 I think I state in my report as, you know, I  
25 think would be considered a fairly

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 209

1 options at Barclays for Renaissance

2 Technologies known as "Cult"?

3 MR. OXFORD: Object to the form.

4 A Yes.

5 Q And what do you understand Cult to  
6 be?

7 A Well, I have to be careful here  
8 because, you know, I -- under my contractual  
9 position with Barclays, I have to be careful  
10 about talking about the specifics of a given  
11 transaction.

12 And this was a transaction that  
13 Barclays executed for one of its clients, so.

14 Q Okay. Let's do it this way. I'll  
15 ask you questions and you tell me if you  
16 agree or not.

17 Were Cult options designed to be  
18 written for a period of longer than 12 months  
19 so that Renaissance could realize long-term  
20 capital gains even on short-term trading that  
21 they did within the options basket?

22 MR. OXFORD: Object to the form.

23 A The -- the transactions as I  
24 understand them were originally designed by  
25 Renaissance Technologies, so I am unable

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 218

1 law.

2 Q Okay. Have you ever taken a view  
3 of U.S. tax law in your work at Barclays that  
4 was contrary to the view that was taken by  
5 the IRS?

6 MR. OXFORD: Object to form.

7 A That's a -- that's a very -- that's  
8 a very wide-open question and, you know, I  
9 wouldn't -- I wouldn't like to be able to be  
10 specific on that.

11 In this particular case, the -- and  
12 as the memo explains, it was not Barclays  
13 that was taking a -- the relevant U.S. tax  
14 position. It was our client.

15 Q Yeah. And that was one of the  
16 reasons why Barclays continued to write the  
17 options for RenTech after this memo came out.

18 Right?

19 MR. OXFORD: Object to the form.

20 A I have to be -- for the reasons I  
21 gave earlier, I have to be very careful here  
22 because I know, obviously, there has been a  
23 significant hearing in the U.S. And I also  
24 know -- I'm sure it's a matter of public  
25 record that Nason Square and Flowana may

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 219

1 still be in dispute with the IRS.

2 But on this particular transaction,  
3 it is fair to say there was a -- particularly  
4 at this time, there was a -- there were  
5 differing views on what the appropriate U.S.  
6 tax consequences for this transaction were.

7 Q Okay. Well, given your  
8 restrictions, let's make reference to a  
9 document.

10 Can you go back to Tab 8, please?

11 A Sorry? Tab 8?

12 Q Eight, correct. It was the one we  
13 were on before, the exhibits that started  
14 with your e-mail.

15 Are you there?

16 A Yeah.

17 Q Okay. Can you go to the fourth  
18 page? It says "Exhibit 61" on the bottom,  
19 and it's a memo with a Barclays header on it.

20 A Sorry? Page?

21 Q It's the fourth page. It has a  
22 Bates number at the bottom,  
23 Barclays-PSI-016946.

24 A 6946. Sorry. My 6946 is Page 1 of  
25 the -- a memo, "SCMUS Prudence Committee."

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 226

1 throughout the transaction, it was -- it's  
2 clearly their tax filings and there was very  
3 clear contractual arrangements around that.

4 That -- so each individual option  
5 was not really a separate transaction. It  
6 was part of an overall synthetic prime  
7 brokerage arrangement between Barclays and  
8 one of its important clients.

9 Q And do you recall at the time  
10 whether Barclays itself disagreed with the  
11 IRS' reading of the revenue laws that  
12 prohibit the Cult transactions?

13 MR. OXFORD: Objection to form.

14 A I'm not sure that's what I just  
15 said. I think our client -- my recollection,  
16 and I have to be getting close to -- I mean,  
17 I have to think about what my duty of  
18 confidentiality to the client is -- but my  
19 recollection is that the clients have made us  
20 aware that the IRS was investigating, through  
21 the normal IRS audit process, the  
22 transactions and that they opened a  
23 transparent dialogue between us, Renaissance,  
24 and the IRS had already existed before the  
25 IRS issued the notice that's in this pact.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 271

1 different tax jurisdictions, it is -- it  
2 would be almost inconceivable to me that the  
3 Danish payment and collection process is  
4 exactly the same as the U.S. payment and  
5 collection process.

6 Q But you don't know?

7 MR. OXFORD: Objection to form.

8 A I -- no, I'm not giving an opinion  
9 on the exact details of either the U.S. tax  
10 administration system or the Danish tax  
11 administration system. Hopefully, I've been  
12 clear that that's not something I'm here  
13 giving an opinion on.

14 But I think you previously asked  
15 me, in general terms, what is my  
16 understanding of how these processes work,  
17 which is what I was trying to answer.

18 Q Okay. So you're not giving a  
19 specific opinion on the details of the  
20 administration of the Danish tax system.

21 Are you giving a general opinion on  
22 the administration of the Danish tax system,  
23 sir?

24 MR. OXFORD: Object to the form.

25 A I am not giving any opinion as

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 294

1           A     I do not believe I've issued an  
2     opinion on exactly what documents were  
3     distributed to which participants in  
4     the -- in the transactions.

5           Q     Did you give an opinion as to  
6     generally what documents were distributed to  
7     various participants?

8                     MR. OXFORD: Objection.

9           A     I don't believe I've given an  
10    opinion as to the specific knowledge of any  
11    individual participant.

12          Q     So you don't have any opinion  
13    either way on what Mr. Markowitz,  
14    Ms. Markowitz, or the plans actually saw in  
15    terms of documents.

16                     Is that right?

17                     MR. OXFORD: Objection to the form.

18          A     Yeah, I -- I have not expressed an  
19    opinion on what any participant, including  
20    those people, may or may not have seen and  
21    exactly what documents they saw.

22          Q     Are you familiar with the term "net  
23    settlement?"

24                     MR. OXFORD: Objection to form.

25          A     The phrase "net settlement" can be

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 314

1 Q Okay. Sorry. Go ahead.

2 A Yeah, I just -- the detail --  
3 the -- like I said, it's probably been at  
4 least eight years if not longer since I've  
5 last had the need to look at 871(m).

6 Q So you don't know whether or not  
7 the U.S. tax system has a concept of dividend  
8 equivalent payments?

9 MR. OXFORD: Object to the form.

10 A I do not recall whether or not it  
11 does take it into the concept of 871(m).

12 Q Do you know whether or not the  
13 Danish tax system has a concept of derivative  
14 equivalent payments?

15 MR. OXFORD: Object to the form.

16 A The -- well, my use of the term  
17 "dividend compensation payment" was as it  
18 relates to the market practice of what the  
19 actual transactions were.

20 I do not believe I've expressed an  
21 opinion as to the application of the  
22 consequences of the transactions under any  
23 specific Danish tax provision.

24 Q Yeah, my question was whether or  
25 not -- and perhaps I misspoke -- whether or



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 315

1 not you know whether or not the Danish tax  
2 system has a concept of dividend equivalent  
3 payments.

4 You can answer that if you know.

5 MR. OXFORD: Objection to form.

6 A I'm sorry. I know you've already  
7 repeated it, but I didn't -- I didn't hear  
8 the precise question.

9 Can you go through it one more  
10 time?

11 Q Well, I'll try one more time. I  
12 take it that the answer to my question is  
13 "no" as to whether or not you know whether or  
14 not the Danish tax system has a concept of  
15 dividend equivalent payments.

16 MR. OXFORD: Objection to form.

17 A Do I know whether or not, under a  
18 specific provision of Danish tax law, there  
19 is a different definition of "dividend  
20 compensation payment" which is different from  
21 the way in which I've used it in my reports,  
22 which means the market practice, and general  
23 equity finance definition of dividend  
24 compensation payment?

25 I do not know if there is such a

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 316

1 provision in Danish tax law and I have not  
2 offered an opinion on the contents of Danish  
3 tax law.

4 Q Okay. So if I asked you whether or  
5 not you knew whether there was -- I asked you  
6 about dividend equivalent payments under U.S.  
7 tax law, and you said you were not clear if  
8 that was a specific concept used in the U.S.  
9 tax system.

10 Right?

11 MR. OXFORD: Object to the form.

12 A I think my response was that I  
13 could not recall exactly how 871(m) defines  
14 the situations and the payments on which  
15 there are withholding obligations.

16 Q Okay. So let's look at  
17 Exhibit 124, briefly. I'm going to point you  
18 to the second paragraph.

19 "Section 51(m) imposes a 30 percent  
20 withholding tax on dividend equivalent  
21 payments that are made or deemed to be made  
22 to non-U.S. persons with respect to certain  
23 derivatives that reference equity (equity  
24 derivatives) of a U.S. issuer."

25 Do you see that?